IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 29901 of 2007(I)

PETITIONER:

JOSEPH THOTTUNGAL,
S/O T.P.MATHEW, AGED 51 YEARS,
THOTTUNGAL HOUSE, PERUMANOOR P.O.,
KOCHI-15.

BY ADV. SRI.JOY GEORGE
SRI.PRAICY JOSEPH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR,
CIVIL STATION, KAKKANADU,
ERNAKULAM.

2. THE PORT OFFICER,
PORT OFFICE, NEENDAKARA,
ASRAMAM, KOLLAM-2.

3. THE DEPUTY TAHSILDAR(R.R),
KANAYANNOOR TALUK OFFICE,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI.BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.29901 of 2007 I

Dated this the 16th day of October, 2007.

JUDGMENT

Petitioner is aggrieved by Exts.P1 and P2, by which an amount of Rs.2,27,751/- is sought to be recovered by way of port hire charges. Petitioner contends that no amount is due from him by way of port hire charges. He refers to Ext.P8 agreement executed by Thottungal Corporation. Apparently, the petitioner was a witness in a supplemental agreement executed between the 2nd respondent and the Hirer of a Dredger, subsequent to Ext.P8.

2. Learned counsel for the petitioner submits that Ext.P8 agreement is executed by Mr.Baby Mathew, the Managing Partner of Thottungal Corporation and Baby Mathew is the brother of the petitioner.

3. The contention in the writ petition, which is reiterated by the learned counsel for the petitioner, is that the petitioner was only a witness to the supplemental

agreement executed subsequent to Ext.P8. He further contends that there are sufficient properties available with the defaulter to recover the amount due from M/s.Thottungal Corporation. He refers to Ext.P6 and P7 documents of title allegedly held by the defaulter.

4. The petitioner has detailed these aspects in Ext.P9 representation filed before the District Collector. He also contends that he is seriously ill suffering from malignancy. He also submits that the amount is sought to be recovered in prosecution of what the petitioner calls as a 'time barred one'. Insofar as the petitioner is concerned, he is not a 'defaulter' within the meaning of the Revenue Recovery Act and the Recovery Officers must take note of the contentions, contends the learned counsel for the petitioner.

After hearing the counsel for the petitioner and the learned Government Pleader, the writ petition is disposed of directing the District Collector, Ernakulam to look into

Ext.P9, hear the petitioner or his authorised representative, within six weeks from the date of receipt of a copy of this judgment. Pending decision on Ext.P9, enforcement of Exts.P1 and P2 shall be kept in abeyance insofar as the petitioner is concerned. But, it is made clear that the Recovery Officers are entitled to enforce the said demand notices against the properties of the defaulter and if necessary, action may be taken against those persons, who were running the affairs of M/s.Thottungal Corporation, which is a party to Ext.P8 agreement.

Sd/-
(V.GIRI)
JUDGE

sk/

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P.S. To Judge